

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

IN RE: § § CASE NO 21-30071
THE GATEWAY VENTURES, LLC, § §
Debtor. § §

**MOTION OF DEBTOR (I) TO FILE SUN CAPITAL LLC PURCHASE
SALE AGREEMENT UNDER SEAL AND (II) FOR RELATED RELIEF**

TO THE HONORABLE H. CHRISTOPHER MOTT, U.S. BANKRUPTCY JUDGE:

The Gateway Ventures, LLC debtor in possession (“TGV” or “Debtor”) file this *Motion of Debtor (I) to File Sun Capital LLC Purchase Sale Agreement Under Seal and (II) for Related Relief* (the “Motion”), and in support thereof would show the Court the following.

INTRODUCTION

1. By this Motion, TGV requests entry of an order permitting TGV to file under seal the full and unredacted version of the Real Estate Purchase and Sale Agreement between TGV and Sub Capital LLC, which PSA is the subject of a motion to sell under 11 U.S.C. §363(f) filed contemporaneously with this Motion (Docket No. 49).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this Motion pursuant to Sections 105, 107, and 1101 et seq. of the United States Bankruptcy Code, Title 11 of the U.S. Code, 11 U.S.C. §101 et seq. (the “Code” or “Bankruptcy Code”), and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Rules” or the “Bankruptcy Rules” or individually a “Rule” or a “Bankruptcy Rule”), L. Rule 9018, and 28 U.S.C. §§157 and 1334.

3. This matter constitutes a core proceeding under 28 U.S.C. §157(b).

4. Venue is proper under 28 U.S.C. §§1408 and 1409.
5. The Court has constitutional authority to decide this Motion under *Stern v. Marshall*, 564 U.S. 462 (2011) and its progeny.

FACTUAL BACKGROUND

The identify and background of the Debtor and Debtor in Possession.

6. TGV owns and is the developer of a tract of real property of approximately 19 acres in El Paso, El Paso County, Texas commonly referred to as 6767 W. Gateway Blvd. El Paso, TX 79925 and 1122 Airway Blvd (the “Development”).

The Commencement of the Bankruptcy Cases.

7. On February 5, 2021 (the “Petition Date”), TGV commenced the above-caption case by filing a voluntary petition under Chapter 11 of the Code.

8. TGV is in possession of its assets and is proceeding in this case as a debtor-in-possession.

9. No trustee or committee is appointed.

The PSA with Sun Capital LLC and Motion to Sell.

10. On or about April 7, 2021, Sun Capital and TGV entered into the PSA.

11. The PSA is for the sale of Lot 9 out of the Development.

12. The PSA is the subject of a motion to sell under Code §363(f) filed contemporaneously with this Motion (Docket No. 49). A redacted version of the PSA is attached to the motion to sell.

13. The parties, and particularly TGV, seek to keep the purchase price and/or other information contained in the PSA (collectively, the “Protected Information”) confidential because of the sensitive nature of the information to the overall business operations of the parties.

14. Maintaining the confidentiality of the Protected Information is important to TGV in order to maximize the value of the Development.

15. Should competitors of TGV or other potential buyers learn of the Protected Information, such information could adversely affect future sales of the Development. The economic terms of the PSA except for the possibility of disclosure in this bankruptcy case otherwise would not be generally available to outside parties especially other potential purchasers of some or all of the Development.

16. The PSA with Sun has been disclosed to HD Lending LLC, which asserts a first lien against the Development, under a separate confidentiality agreement.

RELIEF REQUESTED

17. TGV respectfully requests entry of an order permitting TGV to file the full and redacted Sun Capital PSA under seal.

18. A proposed form of order accompanies this Motion and is incorporated by reference herein.

19. The proposed form of order includes the language specified in L. Rule 9018.

BASIS OF RELIEF

20. The Code, Bankruptcy Rules, and Bankruptcy Local Rules authorize the Court to limit the disclosure of certain confidential information to protect entities from potential harm. Code § 107(b) of the Bankruptcy Code provides, in relevant part, as follows:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may —

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . .

11 U.S.C. § 107(b)(1); *In re Gen. Homes Corp.*, 181 B.R. 898, 903 (Bankr. S.D. Tex. 1995)

(“The court has authority to seal court records, in order to protect trade secrets or confidential

research, development, or confidential information, or to protect a person with regard to a scandalous or defamatory matter.”). Code §105(a) codifies the Court’s inherent equitable powers and empowers it to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

21. Bankruptcy Rule 9018 sets forth the procedures by which a party may obtain a protective order authorizing the filing of a document under seal. Bankruptcy Rule 9018 provides, in relevant part, that “[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information.” Fed. R. Bankr. P. 9018.

22. L. Rule 9018 also contemplates filing documents under seal such as the PSA in order to protect confidential business information.

23. Unlike its counterpart in Rule 26(c) of the Federal Rules of Civil Procedure, Code § 107(b) does not require an entity seeking such protection to demonstrate “good cause.” *See, e.g., Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.),* 21 F.3d 24, 28 (2d Cir. 1994) (holding that a license agreement authorizing a licensee “to reproduce, manufacture, distribute, and sell videocassettes” of three films contained confidential commercial information). Rather, if the material sought to be protected satisfies one of the categories identified in Code § 107(b), the court is required to protect a requesting party and has no discretion to deny the application. *See In re 50-Off Stores, Inc.,* 213 B.R. 646, 655–56 (Bankr. W.D. Tex. 1997) (“The statute, on its face, states that the bankruptcy court is required to protect such an entity on request of a party in interest.”).

24. The Debtor submits that the Protected Information falls within the scope of commercial information that may be protected by the Court pursuant to section 107(b)(1) of the Bankruptcy Code and Bankruptcy Rule 9018. Commercial information is information which would result in ““an unfair advantage to competitors by providing them information as to the commercial operations of the [entity seeking the protective order].”” *In re Faucett*, 438 B.R. 564, 567 (Bankr. W.D. Tex. 2010) (quoting *Video Software Dealers Ass’n v. Orion Pictures Corp.* (*In re Orion Pictures Corp.*), 21 F.3d 24, 27 (2d Cir. 1994)). Commercial information need not rise to the level of a “trade secret” to be protected under section 107(b) of the Bankruptcy Code. See *id.* at 568; *In re Northstar Energy, Inc.*, 315 B.R. 425, 429 (Bankr. E.D. Tex. 2004) (“A bankruptcy court is required to seal documentary information filed in court that does not rise to the level of a trade secret but that is so critical to the operations of the entity seeking the protective order that its disclosure will unfairly benefit that entity’s competitors.”). Rather, Code § 107(b) is “designed to protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury.” *Id.* (internal citations omitted).

RESERVATION OF RIGHTS

25. Debtor reserve the right to amend, supplement, and/or withdraw this Motion prior any interim hearing or final hearing.

CONCLUSION AND PRAYER

WHEREFORE, The Gateway Ventures, LLC, debtor and debtor-in-possession respectfully requests entry of an order permitting the PSA described above to be filed under seal as set forth above and in the proposed order. Movant respectfully requests such other and further relief to movant is entitled at law or in equity.

Dated: May 4, 2021

Respectfully submitted:

WEYCER, KAPLAN, PULASKI & ZUBER, P.C.

By: /s/ Jeff Carruth

JEFF CARRUTH (TX SBN: 24001846)

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ATTORNEYS FOR
THE GATEWAY VENTURES, LLC,
DEBTOR AND DEBTOR IN POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on May 4, 2021 (1) by electronic notice to all ECF users who have appeared in this case to date, and/or as set forth below and (2) by regular mail to all parties appearing in the attached address list (i.e. mailing matrix) obtained from the Court's PACER facility. *A copy of the service lists was not served with the regular mail service set but is available by contacting the undersigned.*

**ANY PARTY REQUESTING A FULL SIZED COPY OF THIS PLEADING OR COPIES
OF ANY EXHIBITS SHOULD CONTACT THE UNDERSIGNED.**

/s/ Jeff Carruth
JEFF CARRUTH

21-30071-hcm Notice will be electronically mailed to:

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Label Matrix for local noticing 0542-3 Case 21-30071-hcm Western District of Texas El Paso Tue May 4 21:42:50 CDT 2021	The Gateway Ventures, LLC c/o PDG Prestige, Inc. 780 N Resler Drive, Suite B El Paso, TX 79912-7196	U.S. BANKRUPTCY COURT 511 E. San Antonio Ave., Rm. 444 EL PASO, TX 79901-2417
Ashish Nayyar 806 Rockport Lane Allen, TX 75013	Ashish Nayyar c/o James M. Feuille ScottHulse PC P.O. Box 99123 El Paso, TX 79999-9123	Ashish Nayyar, Rahim Noorani, Deepesh Shrestha, and Umesh Shrestha c/o James M. Feuille 201 E. Main Drive, Suite 1100 El Paso, TX 79901-1340
Border Demolition Attn: Bonnie Solis 1004 Diesel Drive El Paso, TX 79907-3100	City of El Paso c/o Don Stecker 112 E. Pecan St. Suite 2200 San Antonio, TX 78205-1588	Deepesh Shrestha c/o James M. Feuille ScottHulse PC P.O. Box 99123 El Paso, TX 79999-9123
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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Texas Commission on Environmental Qualit
Reg. 6 Office Compliance Enforcement
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End of Label Matrix	
Mailable recipients	33
Bypassed recipients	0
Total	33

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

IN RE: § § CASE NO 21-30071
THE GATEWAY VENTURES, LLC, § §
§ §
§ §
Debtor. § §

**ORDER GRANTING MOTION OF DEBTOR (I) TO FILE SUN CAPITAL
LLC PURCHASE SALE AGREEMENT UNDER SEAL AND (II) FOR
RELATED RELIEF (RE: DOCKET NO. 50)**

On this day, came on for consideration the *Motion of Debtor (I) to File Sun Capital LLC Purchase Sale Agreement Under Seal and (II) for Related Relief* (Docket No. 50) (the “Motion”) filed herein on May 4, 2021 by The Gateway Ventures, LLC, debtor and debtor-in-possession (“TGV” or the “Debtor”).

IT IS THEREFORE ORDERED THAT:

1. The Real Estate Purchase and Sale Agreement between TGV and Sun Capital LLC that is the subject of a related motion to sell under Code §363(f) (Docket No. 49) may be filed under seal..
2. The matter shall remain under seal for no longer than one year from the date of entry of the order, unless the Court orders otherwise.

3. The only entities permitted to review documents or transcripts of proceedings placed under seal are those entities specified in the order, except that the following entities shall also have access to matters placed under seal unless the Court specifically rules otherwise: (1) the judge presiding over the case, (2) the law clerk to whom the matter is assigned internally by the presiding judge, (3) the Courtroom Deputy responsible for the matter, (4) the Clerk of the Court, and (5) the presiding judge and staff of any appellate tribunal.

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